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Attorneys for Defendant, Micro

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

Schools and Libraries Universal Service	:	CC Docket No. 02-6
Mechanism	:	
	:	SLD Decisions 1185824 and
	:	1185996, 1185946, 1185717,
	:	1185789 and 1185745
In the Matter of Request for Review by	:	
RelComm, Inc. of the Decision of the Universal	:	Billed Entity No. 123420
Service Administrator	:	Atlantic City Board of
Education	:	

**RESPONSE OF THIRD-PARTY MICRO TECHNOLOGY GROUPE, INC. TO
RELCOMM, INC.'S REQUEST FOR REVIEW OF DECISION OF UNIVERSAL
SERVICE ADMINISTRATION FOR YEAR SEVEN OF THE E-RATE PROGRAM**

I. INTRODUCTION

Here we go again. This marks petitioner RelComm Inc.'s (hereinafter "RelComm") fourth attempt to disrupt the rightful award of funds under the E-rate program to the Atlantic City Board of Education to third-party contractors such as Third-Party Respondent, Micro Technology Groupe, Inc. (hereinafter "MTG"). Relcomm's latest attempt is as flawed as its earlier ones, riddled with half-truths, glaring omissions and tortured constructions. Relcomm's latest attack suffers from a glaring critical flaw: Relcomm failed to submit a bid for the Year 7 contract. Relcomm, therefore, lacks standing to challenge the Year 7 award. It is time to put

an end to this nonsense and deny Relcomm's baseless Petition and allow the various contractors, including MTG to fulfill its contract with the ACBOE.

Relcomm posits that it is an "aggrieved party which participated in the bid process for entity #123420 . . ." for Year Seven of the E-Rate Program, and therefore, has standing to appeal the decisions of the SLD dated January 11, 2005. To the contrary, RelComm is not an "aggrieved party" as to have standing to petition the Federal Communications Commission for review of the decision of the SLD because it never even submitted a bid to the ACBOE for the Year Seven E-Rate awards. Since RelComm did not bid, it is not an aggrieved party.

RelComm cites the case of Entech Corporation vs. City of Newark, 351 N.J. Super. 440, 462, 798 A.2d 681, 694 (N.J. Law Div. 2002) for the proposition that ACBOE was required to suspend the bid and respond to RelComm's letter challenging the Year Seven bid request. RelComm is grossly misguided.

First, Entech involves an interpretation of New Jersey state law and is inapplicable. Second, Entech merely holds that N.J.S.A. 40A:11-13(e) "affords potential bidders the right to preserve a bid specification challenge which can then be perfected after the bid opening and affords the contracting entity the flexibility to address the challenge before the opening of the bid or defer it until after the opening with the knowledge that the bid award may then be brought into question." Entech at 351 N.J. Super. 460, 798 A.2d 681, 693. Furthermore, the statutory

provision is consistent with the judicial holding that unsuccessful bidders who bid on a contract without first objecting to the specifications lack standing to “challenge the award of the contract to a rival bidder or to attack allegedly illegal specifications.” Id. at 459, 692.

Unlike the plaintiff in Entech, RelComm was not bidding under State regulations, but rather, Federal regulations. Additionally, RelComm, is not an unsuccessful bidder. Rather, it is not a bidder at all because it never submitted a bid, successful or unsuccessful. In Entech, the plaintiff had at least submitted a bid.

RelComm attempts to justify its failure to submit a bid by claiming that it challenged the bid specifications and then assumed the bid process had been suspended even though it admits that the ACBOE never suspended the bid. Then, in a classic case of the double speak-double negative that earmarks its earlier pleadings, RelComm claims that “unbeknownst to RelComm, . . . , ACBOE did not suspend the bid, but instead went forward” and RelComm was therefore “prevented from submitting its bid.” RelComm Petition for Review at p. 3. In other words, RelComm is claiming that it did not know that the bid was not suspended. Once one cuts through the double negative, what remains is that RelComm knew that the bid was going forward. RelComm’s conclusion that it was prevented from submitting its bid is a clear non-sequitor. The truth is that

RelComm knew the bid was going forward, nothing prevented it from submitting its bid, it simply chose not to bid and cannot now challenge the award.

Additionally, as previously noted, the New Jersey statutes are inapplicable as this is a Federal bidding process and not a State bidding process. Therefore, if RelComm did not submit a bid, it has not sustained an injury.

It is overly speculative to suppose that RelComm, Inc. has been prejudiced or harmed by the Year Seven E-Rate awards because it has not set forth a specific record of relevant material facts. An action by the Administrator may be challenged only by the party that is aggrieved by the action. See In the Matter of Request for Review of the Decision of the Universal Service Administrator by Virginia Department of Education, Richmond, Virginia, 17 F.C.C. R. 947 (2002). In that case, the Request for Review did not detail whether the applicant was denied funding as a result of the alleged actions by the SLD and made no showing that the Administrator's actions caused it to be aggrieved. Therefore, the Request for Review was denied and dismissed.

Similarly, RelComm here fails to show that its interests have been adversely affected or harmed by the SLD's decision, and has failed to even demonstrate that it submitted a bid in the Year 7 program which was unsuccessful. Moreover, it has failed to demonstrate good cause for not participating and submitting a bid in the Year 7 E-rate program. Such lack of information is in violation of the general filing

requirements of 47 C.F.R. § 54.721(b) and, therefore, RelComm's request for review should be denied.

RelComm's instant allegations are largely the outgrowth of its baseless complaints regarding bidding process violations pertaining to the ACBOE's Year Six E-Rate bid process and bid awards. Accordingly, MTG incorporates herein by reference its previous responses to RelComm's Request for Review and true and correct copies are attached hereto as Exhibit "A".

Additionally, most of the facts in this Request for Review of the decision of the Universal Service Administrator for Year Seven of the E-Rate Program are directed to the Atlantic City Board of Education (hereinafter "ACBOE") and pertain to facts peculiarly within the knowledge of the School District. Therefore, MTG. would concur in any response filed by the ACBOE and Alemar Consulting and would incorporate by reference any answers therein as though fully set forth herein at length.

II. ALLEGED SPECIFIC VIOLATIONS AND PROHIBITED BEHAVIOR

A. FRN 1185824

RelComm contends that this award in the amount of \$146,606.40 to MTG is a duplicate of an award to ACBOE during Year 6 under FRN #526880000481973 for extended warranties. RelComm is factually wrong. A review of Exhibit "C" attached to Petitioner's Request for Review does not show a request for

extended warranties and, therefore, Petitioner's claim is unsubstantiated.

While a review of Exhibit "D" attached to Petitioner's Request for Review does, in fact, show a request for extended warranties for existing eligible equipment, such proposal is appropriate under the rate regulations. Also, it is not against the applicable regulations to rebid against items not yet awarded, and such was appropriate here because Year 6 was not yet funded at the time of bidding for Year 7. However, when Year 6 was funded, it is MTG's understanding that all duplicate requests for Year 7 were properly withdrawn.

Accordingly, based upon the foregoing, Petitioner's Request for Review should be denied.

B. FRN 1185996

RelComm contends that this award in the amount of \$299,068.20 to MTG for the purchase and installation of a 165 node VPBX at the ACBOE high school facility is a mistake due to the decision by ACBOE and its consultant, Martin Friedman, to file separate Form 470s. It is the position of MTG that any response to this allegation is more appropriately answered by ACBOE and/or Martin Friedman. By way of further answer, however, even if Petitioner is factually correct that the eligible discount percentage is only 80% and not

90%, the appropriate remedy would be to correct the discount rate and not reverse the entire funding decision.

Accordingly, Petitioner's Request for Review should be denied.

C. FRNs 1185946; 1185717

RelComm contends that these two FRNs awards the identical same work to two different vendors and are, therefore, duplicates of each other. Once again, RelComm is factually incorrect.

First, the wiring was never performed for Year 6 because the funding was stopped, as RelComm is well aware. Secondly, the two FRNs are not duplicates for the same area but, rather, are for two different areas, another fact of which RelComm is well aware. Finally, it should be noted that the 200 cable drops are necessary because the original wiring that was installed by RelComm was poorly and inadequately installed thereby necessitating the current work.

For these reasons, Petitioner's Request for Review should be denied.

III. **CONCLUSION**

MTG properly and competitively bid for the ACBOE Year 7 E-Rate contract and, once again, RelComm's bid protest is meritless. For the foregoing reasons, MTG requests that RelComm's Request for Review be denied, that all

relief requested by RelComm be denied, and that the Commission award such other and further relief as is just and necessary.

ABRAHAMS, LOEWENSTEIN & BUSHMAN, P.C.

BY:

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	:	1185996
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Administrator	:	Atlantic City Board of
Education	:	

PROOF OF SERVICE

(4) On March 11, 2005, I, the undersigned, personally served an original and four copies of the within Micro Technology, Groupe, Inc.'s Response to Relcomm's Request for Review of Year Seven E-Rate Decisions of Universal Service Administrator to the Office of the Secretary of the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, MD 20743 via Federal Express Overnight Delivery and E-Filing.

I further certify that on March 11, 2005, I, the undersigned, personally served one copy of the within Response of Micro Technology, Groupe, Inc. upon the following individuals via First Class Mail:

J. Phillip Kirchner, Esquire
Flaster Greenberg, P.C.
1810 Chapel Road

Deborah Weinstein, Esquire
The Weinstein Firm
225 West Germantown Pike, Suite 204

West Cherry Hill, NJ 08002

Plymouth Meeting, PA 19462-1429

Michael Blee, Esquire
Rovillard & Blee
8025 Black Horse Pike
Bayport One, Suite 455
W. Atlantic City, NJ 08232

Schools and Library Division
Box 125
Correspondence Unit
80 South Jefferson Road
Whippany, NJ 07981

I hereby certify that the foregoing statements made by me are true. I am aware that if any

of the foregoing statements made by me are willfully false, I am subject to punishment.

BY:

Ralph J. Kelly, Esquire
Donna M. Brennan-Scott, Esquire

Dated: March 11, 2005

EXHIBIT “A”

ABRAHAMS, LOEWENSTEIN & BUSHMAN, P.C.

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BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

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Mechanism	:	
	:	SLD Decision 1022916 and
	:	1023492
In the Matter of Request for Review by	:	
RelComm, Inc. of the Decision of the Universal	:	Billed Entry No. 123420
Administrator	:	Atlantic City Board of
Education	:	

**RESPONSE OF MICRO TECHNOLOGY GROUP, INC.
TO RELCOMM, INC.'S REQUEST FOR REVIEW
OF UNIVERSAL SERVICE ADMINISTRATOR'S DECISION**

I. INTRODUCTION

Respondent, Micro Technology Groupe, Inc. (hereinafter "MTG") hereby responds to RelComm Inc.'s (hereinafter "RelComm") Petition for Review.

Preliminarily it should be noted that most facts in the Request for Review are directed to the Atlantic City Board of Education (hereinafter "ACBOE") and pertain to facts peculiarly within the knowledge of the School District. Accordingly, Micro Technology Groupe, Inc. concurs in the joint response of ACBOE and Alemar Consulting and incorporates by reference its answers therein as though fully set forth herein at length.

This marks RelComm's third attempt to prevent the legitimate award of work to MTG. Like its first two attempts, RelComm's Petition is riddled with half-truths, misrepresentations and other distortions in a critically flawed effort to block the legitimate award of work that was brought about largely by its own defective work for the Atlantic City Board of Education and its schools.

RelComm asserts that its allegations "are currently the subject of a lawsuit pending in the Superior Court of New Jersey . . ." and RelComm attaches a copy of the complaint to its petition. What RelComm conveniently fails to mention is that it dropped MTG from the suit because it had no evidence to support its allegations against MTG. A true and correct copy of the order dismissing MTG from the suit is attached hereto as Exhibit A. This is typical of RelComm's continual "throw it against the wall and see if it sticks" tactics in this matter. Make enough averments, regardless of their completeness or accuracy, and maybe your opponent will not be able to respond to all of them.

The whole truth of the matter is that RelComm did not have a federal court case against MTG (it dropped that lawsuit in the face of a motion to dismiss); a few months ago, in state court, it did not have sufficient evidence to sustain a case against MTG and it dropped them from that lawsuit; and it does not have one now. The specifics of its Petition suffer from the same defect as the half-truth contained in its introduction. The whole truth is that RelComm's performance for the ACBOE

under the E-rate program was defective. Consequently, when the ACBOE invited competition, RelComm could not legitimately compete in what was a full and fair competitive bidding process, and now it seeks this Commission's assistance in continuing its defective work and in depriving the legitimate award to a reputable company.

II. MTG HAS NO "RELATIONSHIP" WITH ALEMAR - IT SIMPLY WON E-RATE BIDS

RelComm contends that MTG has received a contract award each and every time "Aleamar has managed the E-Rate process on behalf of a school district, a total of 31 times dating back to Year 3 of the E-Rate Program". *See RelComm Request for Review at 3.* Again, this is true only so far as it goes. What RelComm omits is the whole truth: MTG received only part of the entire E-rate program award, and fails to mention the bids and/or portions of the bids that MTG did not receive. Other entities such as Peco Hyperion, Geoffrey P. Deans, Nextel, Compuworld, ComTec, and others also received awards for those programs. More significantly, the propriety of those awards was never challenged and RelComm cannot point to known bid-rigging, bid protest, or other irregularities in the award of those bids in the very public arena that

is E-Rate. Far from showing any malfeasance, the award of these E-Rate contracts is a testament to MTG's competency and integrity in the E-Rate arena.

III. THERE WAS NO SECRET WALK-THROUGH - THE DISTRICT TOLD RELCOMM OF THE EARLIER WALK-THROUGH IN WHICH OTHER BIDDERS PARTICIPATED

As to its claim that Alemar conducted a second walk-through of the high school facilities to which RelComm and others were not invited, this is yet another example of RelComm's penchant for playing fast and loose with the facts. The truth is that there was no second walk-through to which RelComm and other bidders were not invited.

The high school was toured during the first walk-through and MTG was not the only vendor to participate. CompuWorld also participated in that walk-through and submitted a competitive bid. Martin Friedman's e-mail to RelComm, attached to the ACBOE's response to the Request for Review as Exhibit 2, specifically conveyed to RelComm that "one walk-through has already taken place and, I believe, that a second walk-through is being scheduled for this week. Please contact John Holt . . . to be placed on that tour." RelComm's contention is also specifically contradicted by its own submission. Exhibit H to RelComm's petition is the sign-in sheet for the walk-through that shows that representatives from Interlink, Comtec

and Geoff Deans also attended the walk-through that RelComm now contends others were not invited to.

There was also nothing secret about any walk-throughs. Martin Friedman explicitly told RelComm in the above-referenced e-mail that one had occurred and another was being scheduled. Significantly, until it commenced its flurry of defective litigation, RelComm never complained to anyone about the walk-through that it now contends was a bidding irregularity.

IV. PVBX IS NOT A BID IRREGULARITY; IT'S AN E-RATABLE PRODUCT PRODUCT CALLED FOR BY THE BID DOCUMENTS

RelComm's contention that MTG's inclusion of a PVBX in its bid is further proof of a bidding irregularity also fails. First, as set forth in ACBOE's response to the Request for Review, the Form 470 called for a VOIP with video and video equipment, and the PVBX is the functional equivalent of that system. The PVBX solution was included in the MTG bid because the School Board wanted a "best solution." It was understood that such equipment was 100% E-rate eligible and the PVBX pricing was separated from the rest of the other prices in case the School Board chose not to submit it for E-rate funding. However, it was approved by the SLD for funding in Year 6.

Contrary to RelComm's bald assertion that it is not e-ratable, it is clearly e-ratable, and we concur in the response filed by the ACBOE and incorporate the

same by reference as though fully set forth herein at length.

**V. MTG WAS NOT GIVEN SEPARATE DOCUMENTS;
RELCOMM AUTHORED THE DOCUMENTS**

This is yet another example of RelComm's duplicitous behavior. RelComm contends that MTG was given documents that were not given to other prospective bidders. *See RelComm Request for Review at 9-10.* RelComm claims that documents regarding the PVBX system, a document entitled Network Diagram of ACBOE, and a document that RelComm alleges contains the existing wiring LAN breakdown of all the schools within the district were provided to MTG and "not given to other bidders." Lost in the babble, however, is whether or not RelComm had access to these documents. The fact, and whole truth, is that the Network Diagram and LAN breakdown are RelComm's own documents that RelComm clearly had access to and, in fact, refused to give to other bidders. RelComm clearly cannot claim a bidding irregularity regarding "documents not given to other bidders" when RelComm itself had access to these documents because it generated them in the course of its earlier E-rate work at the District.

In addition to this glaring omission by RelComm is the additional fact that nowhere does RelComm explain the significance of these documents, or how it gave MTG an unfair advantage over it or other bidders. RelComm does not make this claim because it cannot.

RelComm itself had the distinct advantage of being the most familiar with the network infrastructure (having been the provider for the past four years sans a competitive bidding process.) MTG, on the other hand, had no knowledge of the kind of network in place, or types of network servers, or even the manner of interconnections on the network. When MTG questioned the district tech employee who was at the first walk-through about network infrastructure, the district technician produced two documents but clearly advised the vendors that she did not know if the information was accurate, when it was developed or even if it was up to date. The Network Diagram merely showed the number of servers and the wiring diagram merely showed the manner of interconnections on the network. Neither provided any unfair advantage, nor can RelComm prove any.

Moreover, the documents regarding the PVBX system were not provided by the School District. Rather, MTG obtained these documents from the Internet. MTG was never given different specifications or modified specifications that were not given to RelComm or other bidders. In fact, although thousands of pages of documents have been produced in the aforementioned litigation, RelComm can point to no such different or modified specifications.

VI. MTG'S BID WAS PROPERLY DETERMINED TO BE THE BEST SOLUTION

RelComm contends that because MTG's bid was the highest at \$3.6 million

and allegedly contained non-E-ratable items, it should be disqualified. *See Request for Review at 9.* However, the \$3.6 million “best solution” bid included “per drop” pricing for cabling, which allows the School Board to scale up or down the amount of wiring they wished to submit. Additionally, MTG provided the School Board with pricing on non-E-rate eligible items which were separate and intended to let the School Board know what it would encounter financially to fully implement the technology. All was properly in accordance with the “best solution” approach specifically asked for, and stressed to the vendors, by the School District.

In addition, RelComm contends that the unlawful nature of MTG’s bid is demonstrated by its “wastefulness.” *See RelComm Request for Review at 10.* RelComm contends that MTG’s bid, calling for the complete rewiring of the entire district network despite the fact that the existing wiring was under warranty, is wasteful. The fact that the existing wiring may be under warranty is not the issue and RelComm, again, misses the mark.

First, MTG’s contract award does not call for rewiring of the entire ACBOE network. The cover letter that was submitted with the bid states only that “many schools” should have their wiring replaced. See Exhibit “B” attached hereto. Furthermore, as the letter indicates, the way that many of the schools were wired provided an inefficient network infrastructure and, in some cases, failed to meet industry standards. For example, there were instances whereby the location of the existing wiring did not allow for

any electrical components, such as network switches and UPS equipment, to be powered via AC power. Moreover, having network wiring in that fashion was inefficient in trying to diagnose network problems in cases where technicians would need to enter and disrupt classes to try and diagnose problems.

Further, MTG did not intend to replace all of the wiring but only those that suffered from the above problems. (There were a few areas where the wiring was properly installed and those areas would not be replaced.) Therefore, MTG recommended the wiring be replaced in certain areas and, in some cases, certain buildings. Again, this recommendation was consistent with the ACBOE's desire for a "best possible solution."

Conversely, as far as "wastefulness" goes, it was RelComm that excessively billed the District for servers and other hardware for many times the going rate in RelComm's earlier E-rate projects. *See Atlantic City Board of Education Response, Appendix 1, Answer and Counterclaim to Plaintiff's Complaint, at 9 - 12, Paragraphs 8 - 17.*

VII. CONCLUSION

MTG properly and competitively bid for the ACBOE contract and RelComm's bid protest is meritless. For the foregoing reasons, MTG requests that RelComm's Request for Review be denied, that all relief requested by RelComm be denied, and that the Commission award such other and further relief as is just and necessary.

ABRAHAMS, LOEWENSTEIN & BUSHMAN, P.C.

BY:

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Dated: 11/5/04

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**MICRO-TECH'S REPLY TO RELCOMM'S
OPPOSITION TO PETITION OF MICRO-TECH**

I. INTRODUCTION

RelComm Opposition to Micro-Tech's petition in Opposition seems to adopt the "I can't hear you" philosophy. It thinks that it just has to repeat its earlier half-truths and misrepresentations contained in its earlier submissions, ignore the critical flaws that Micro-Tech's petition brought out, and that by sheer repetition the Commission will accept their flawed arguments as true. The simple fact remains: there is no improper relationship between Micro-Tech and Alemar, there was no secret walk-through, and Micro-Tech was not given any information that RelComm (or the other bidders) did not also have access to. What remains is that Micro-Tech was properly

awarded the E-rate contract.

II. MICRO-TECH'S OTHER CONTRACT AWARDS WERE PROPER
AND THERE IS NO IMPROPER RELATIONSHIP WITH ALEMAR.

RelComm again repeats its claim that Micro-Tech has some sort of improper relationship with Alemar. Their sole basis is that Micro-Tech won contracts that Alemar was involved with. They point to no irregularity, collusion, bribe or any other irregularity. They argue that because Micro-Tech won the contracts (in truth, Micro-Tech won only parts of those contracts), there must be some irregularity. Despite the fact that RelComm has been involved in active litigation for several months, received thousands of pages of documents and deposed several witnesses, it can point to no illegality or irregularity in the award of (parts) of those contracts to Micro-Tech. It can point to no such irregularity because there is none. Instead of supplying facts, it now provides the bald conclusion that “MTG’s relationship with Alemar violates E-rate program rules and FCC regulations.” RelComm Opposition to Petition at p. 5. Not only does RelComm fail to supply any facts to support this allegation, it fails to cite to any E-rate rule or FCC regulation that was violated by Micro-Tech’s winning of earlier contracts.

By RelComm’s logic, the fact that Micro-Tech won earlier contracts that Alemar played some unspecified role in, disqualifies it from bidding. By such logic, other companies, such as CompuWorld, Com-Tec, Nextel, etc. would all be precluded from bidding because they too won contracts that Alemar was involved with.

The whole truth is that there is no improper relationship between Micro-Tech

and Alemar, and the award of this contract to Micro-Tech was totally proper.

III. RELCOMM AND THE OTHER BIDDERS HAD THE SAME ACCESS TO MATERIALS THAT MICRO-TECH HAD

RelComm again repeats its earlier claims without a scintilla of evidence and without addressing the fundamental flaws illustrated by Micro-Tech's Response.

The Walkthrough. RelComm again claims that there was an earlier "secret walkthrough" of the Atlantic city High School. RelComm Opposition to Petition at pp. 6-7. Micro-Tech pointed out in its Petition that other bidders participated on the walkthrough and that RelComm was told about the earlier walkthrough as evidenced by RelComm's own exhibit attached to its Petition. See Exhibit B, RelComm Opposition to Petition.

RelComm never addresses the fact that before it submitted it was told about the walk-through. Instead, it repeats its (inaccurate) representation that this walkthrough was "secret."

Next, RelComm goes to great lengths to point out that certain participants were later disqualified or are now performing subcontractor work for Micro-Tech. The fact that a bidder who participated on the walk-through had its bid disqualified is a total non-sequitor. The fact remains: the first walkthrough was not secret, other bidders participated, and RelComm was told about the earlier walkthrough. It made no objection until after the fact when it was the unsuccessful bidder.

The PVBX. This is a total red-herring. Micro-Tech included the PVBX because it always includes a PVBX. Again, RelComm has failed to show any connection

between the inclusion of the PVBX, the award of the contract to Micro-Tech, and any illegality or irregularity.

Other Documents. RelComm again ignores the obvious regarding Micro-Tech's receipt of RelComm's network diagram and district wiring documents. In its earlier Petition, Micro-Tech showed that RelComm, itself, had possession of these documents so it could not claim that Micro-Tech had some unfair advantage and RelComm fails to address how these documents gave Micro-Tech any leg up on the other competitors. Both issues are critical flaws which RelComm continues to refuse to address. Moreover, RelComm glosses over the fact that it was the author of these documents. Having admitted to that fact, it cannot claim that Micro-Tech had some sort of advantage over it. It does not even address what these documents show and how they were used in formulating Micro-Tech's bid. It cannot elucidate these things because the simple truth is that these documents did not give Micro-Tech any type of advantage in its bidding.

IV. MICRO-TECH'S BID IS THE BEST SOLUTION

Finally, RelComm claims that Micro-Tech is defrauding the School District by the wiring proposal of its bid. RelComm claims that the bid calls for removal of all wiring even though RelComm contends that much of the existing wiring can be utilized. In its response, Micro-Tech pointed out that the bid was a flexible per drop bid. RelComm attempts to refute this by claiming that the bid called for the entire replacement of all of the existing wiring and was not flexible. Again, RelComm resorts to twisting Micro-Tech's bid to make its claim. RelComm claims that Micro-Tech's bid

was “quite clear that its proposed wiring was an all or nothing proposition.” RelComm Opposition at p. 10. This is a distortion of Micro-Tech’s bid. Rather, Micro-Tech proposed that “We feel the wiring in many of the schools should be replaced.” (Emphasis added). Thus, the bid provides for many schools, not the all or nothing that RelComm misconstrued. Likewise, the bid did allow for flexibility : “There is a per drop price for a cable run which will allow you to make add/deletes to the number of runs that we propose.” In short, the bid was flexible.

V. CONCLUSION

For the foregoing reasons, Micro-Tech’s Petition should be granted and all relief requested by RelComm should be denied.

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Dated: 11/29/04

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**THIRD PARTY PETITION OF MICRO TECHNOLOGY
GROUPE, INC. FOR WAIVER OF 47 C.F.R. § 54.721(d)**

Micro Technology Groupe, Inc. (“MTG”), the successful bidder, selected vendor and third-party in the above-captioned matter, petitions for waiver of the rules governing the review and consideration of the Request for Review submitted by RelComm, Inc. (“RelComm”) to the Federal Communications Commission (“FCC”) dated August 6, 2004.

Pursuant to 47 C.F.R. § 54.721(d), if a request for review alleges prohibitive conduct on the part of a third party, the request for review shall be served on the third party. Further, the “third party may file a response to the Request for Review.” The third party must abide by the time period applicable to the filing of reply that is set forth in Section 1.45.

However, pursuant to 47 C.F.R. § 1.3, the FCC's rules may be waived upon a showing of good cause. Therefore, it is respectfully requested that the FCC waive the provisions of 47 C.F.R. § 54.721(d) for the following good cause reasons.

First, MTG was never properly served with a copy of the Request for Review pursuant to statute. Although undersigned counsel, who represented MTG for purposes of the state court trial, was sent a copy of the Request for Review in the mail, he was not authorized to accept service on behalf of MTG for any other proceedings, including that instituted with the Federal Communications Commission. Furthermore, although Administrative Rule § 1.47(d) provides that "when a party is represented by an attorney of record in a formal proceeding, service shall be made upon such attorney," MTG was dropped from the state court action and it is no longer a party to that matter which is still pending. Additionally, undersigned counsel never represented MTG in any formal proceeding pertaining to the bidding process or awarding of the contract by the Atlantic City Board of Education and, as a result, service should have been made on MTG. directly.

Therefore, since MTG has never been properly served, and undersigned counsel has since been authorized as representative of MTG for purposes of these proceedings, it is respectfully requested that MTG's Petition for Waiver be granted and the Commission accept the attached response.

Additionally, assuming *arguendo*, that service was proper, a review of the voluminous documents filed by RelComm indicates a complex and lengthy pleading relying on documentation obtained in the state court matter of which Petitioner is

not a party. Most facts are directed to the Atlantic City Board of Education and are issues peculiarly within the knowledge of the Atlantic City Board of Education. Petitioner, then, had to devote substantial time to investigating and analyzing the contents of the Request for Review and was dependent upon the Atlantic City Board of Education, who has been in the midst of pretrial litigation and discovery in the civil lawsuit filed by RelComm, for a comprehensive response. For this reason, it is respectfully requested that MTG's Petition for Wavier be granted and the commission accept the attached response.

Finally, this is an important matter to Micro Technology Groupe, Inc. as it involves allegations of improprieties and a request to reverse SLD's decision to fund ACBOE's Year-Six application and to suspend or disbar Micro Technology Groupe, Inc. from participation in the E-Rate Program. The severity of the remedy which RelComm seeks would be extremely harsh and detrimental to the business of MTG.

Consequently, it is in the public interest to consider the attached response and RelComm will not be prejudiced if this Petition is granted.

WHEREFORE, Petitioner Micro Technology Groupe, Inc. respectfully submits that it has shown good cause in support of its Petition for Waiver and requests that 47 C.F.R. § 54.721(d), if applicable in light of lack of proper service, be waived so that the attached response may be filed.

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Dated: 11/5/04